TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 104.

HENRY A. M. SMITH, AS RECEIVER OF THE LATE CORPORATION NAMED AND STYLED "THE PRESIDENT, DIRECTORS AND COMPANY OF THE STATE BANK," &c., PLAINTIFF IN ERROR,

vs.

R. H. JENNINGS, AS TREASURER OF THE STATE OF SOUTH CAROLINA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF SOUTH CAROLINA.

FILED AUGUST 25, 1905.

(19,882.)

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., JULY 19, 1906.

1 I, U. R. Brooks, Clerk of the Supreme Court of the State of South Carolina, do hereby certify that the foregoing papers are true and correct copies of the original papers on file in my office, and are also the original papers required by law to be sent to the Clerk of the Supreme Court of the United States, in the case of H. A. M. Smith as Receiver, &c. Petitioner, against R. H. Jennings as Treasurer of the State of South Carolina, Respondent, to wit:—

1. Copy of Petition or application for writ or order Injunction.
2. Copy of Rule to show cause and temporary restraining order.
3. Copy of Return to Rule to show cause.
4. Copy of Opinion and Decree.
5. Copy of Petition for allowance of Writ of Error.
6. Copy of Bond.
7. Original Writ of Error.
8. Original Citation.
9. Original Assignment of Errors.

Witness my hand and the Seal of the Supreme Court of South Carolina, at Columbia, this 18th day of August, 1905.

[Seal Supreme Court of South Carolina.]

U. R. BROOKS,
Clerk of the Supreme Court
of the State of South Carolina.

2 THE STATE OF SOUTH CAROLINA:

In the Supreme Court, April Term, 1903.

H. A. M. SMITH, as Receiver of the Late Corporation Named and Styled "The President, Directors and Company of the State Bank," but Commonly Called "The State Bank," and Located in the City of Charleston, in the State of South Carolina, Petitioner.

vs.

R. H. JENNINGS, as Treasurer of the State of South Carolina, Respondent.

Application for Writ or Order of Injunction.

To the Honorable the Chief Justice and the Associate Justices of the Supreme Court of the State of South Carolina:

The petition of H. A. M. Smith, as Receiver as aforesaid, respectfully shows:

First.

That, by an Act of the General Assembly of the State of South Carolina, entitled *"An Act to incorporate the South Carolina and State Banks,"* and ratified the 19th day of December, A. D. 1801, (Statutes of South Carolina, Vol. 8, p. 1), "The State Bank" was

inter alia, incorporated, and made a corporation and body politic in the City of Charleston.

3 That, by an Act of the General Assembly of the said State, entitled *"An Act to incorporate the State Bank, and imposing certain restrictions on the Directors, Officers and Servants of Banks in this State,"* and ratified the 18th day of December, A. D. 1802, (Stat. of So. Ca., Vol. 8, p. 6), so much of the said Act (entitled *"An Act to incorporate the South Carolina and State Banks,"* and ratified the 19th day of December, A. D. 1801, as aforesaid) as related to the said State Bank was repealed, and the said Bank was re-incorporated and made a corporation and body politic by the name and style of *"The President, Directors and Company of the State Bank,"* in the City of Charleston, to continue until the 1st day of January, A. D. 1823.

That, by an Act of the General Assembly of the said State, entitled *"An Act to renew the charter of the State Bank, and the Bank of South Carolina; and for other purposes therein mentioned,"* and ratified the 21st day of December, A. D. 1822, (Stat. of So. Ca., Vol. 8, p. 39), the charter of the said State Bank was renewed, *"for and during the term of twelve years, from the thirty-first day of December, instant."* That, by an Act of the General Assembly of the said State, entitled *"An Act to renew the charter of the State Bank,"* and ratified the 19th day of December, A. D. 1833, (Stat. of So. Ca., Vol. 8, p. 67), the charter of the said Bank was further renewed, *"for the term of twenty-one years, from the expiration of its present charter."* And that, by an Act of the General Assembly of the said State, entitled *"An Act to Renew and Amend the Charter of the State Bank,"* and ratified the 20th day of December, A. D. 1853, (Stat. of So. Ca., Vol. 12, p. 217), the charter of the said Bank was still further renewed, *"for the term of twenty-one years from the expiration of its present charter."*

Second.

That, by an Act of the General Assembly of the said State, entitled *"An Act to Authorize Aid to the Blue Ridge Railroad in South Carolina,"* and ratified the 21st day of December, A. D. 1854, (Stat. of So. Ca., Vol. 12, p. 327), it was enacted as follows:

4 "I. *Be it enacted* by the Senate and House of Representatives, now met and sitting in General Assembly, and by the authority of the same, That whenever satisfactory proof is produced to the Comptroller General, within two years after the passing of this Act, that one million of dollars have been subscribed by responsible persons, companies or corporations, to the capital stock of the Blue Ridge Railroad Company, in South Carolina, he is hereby authorized and required to subscribe, on behalf of the State, the sum of five hundred thousand dollars; and when satisfactory proof is produced of a further subscription, by responsible persons, companies or corporations, of five hundred thousand dollars, and also that at least one-fifth of the subscribed capital of the company is held by responsible individuals or private corporations, then the Comptroller General is authorized and required to subscribe, on behalf of the State, the fur-

ther sum of five hundred thousand dollars. And on thus subscribing, the Comptroller General shall take from said company certificates of such an amount of shares in said capital stock as the State shall be entitled to by her said subscription.

"II. * * * * * * *

"III. * * * * * * *

"IV. That the subscriptions shall be paid in the manner and subject to the terms and conditions hereinafter expressed.

"V. That the Governor of the State of South Carolina be, and he is hereby, authorized and directed, in the name of the said State, to issue bonds, to be countersigned by the Comptroller General, not exceeding in all the sum of one million dollars, which shall be payable in five instalments of two hundred thousand dollars each, the first instalment to be payable after the expiration of twenty years, and the remaining eight hundred thousand dollars in four equal annual successive instalments thereafter: *Provided,* That the Governor and Comptroller General may pay for the aforesaid subscriptions, in cash, or in the above bonds, at par, as they shall deem best: *Provided,* also, That the interest to be paid on such bonds shall not exceed the rate of six per centum per annum.

"VI. That whenever satisfactory proof shall be produced to the Comptroller General that the sum of two hundred thousand dollars has been paid in by the shareholders, and expended in the construction of the road, he shall pay to the said company, on behalf of the State, a like sum of two hundred thousand dollars; and for every like sum so paid in and expended by the shareholders, he shall pay to the company two hundred thousand dollars, and so on until the whole subscription of one million dollars shall be exhausted.

"VII. * * * * * * *

"VIII. * * * * * * *

"IX. * * * * * * *"

5 *Third.*

That, by an Act of the General Assembly of the said State, entitled "*An Act to enable the Banks of the State to renew business or to place them in liquidation,*" and approved March 13, 1869, (Stat. of So. Ca., Vol. 14. p. 212), it was enacted as follows:—

"SECTON 1. *Be it enacted* by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same, That all the banks incorporated by authority of this State, and which have, by said authority, issued bills of credit known as bank bills, and have failed to comply with said corporate privileges, by refusing to pay their bills of credit, and are now thus failing to comply with the provisions of said Act of incorporation in this particular, and shall so continue to

violate said Act until the first day of December, 1869, shall forfeit all corporate rights and privileges, and are forbidden to transact any business as banking institutions: *Provided,* That the redemption of their bills in United States currency shall be deemed the fulfil-ment of their obligations to the holders of said bills.

"SEC. 2. That it shall be the duty of the Comptroller General, immediately after the ratification of this Act, to furnish each of the said banks of the State with a copy thereof, and they shall report thereon to the Comptroller General, giving a full statement of all the property, and assets, and liabilities of the bank, and shall furnish a full statement of all their transactions every thirty days thereafter; and for every case of failure or neglect to so report, the officers of the bank shall forfeit and pay twenty-five dollars for each day so failing, to be collected by the Sheriff of the County on the order of the Comptroller General, approved by the Governor, to be appropriated to the use of the State; and if any of the banks agree to redeem their bills, the Comptroller General shall give notice of said agreement in one or more of the newspapers of this State, and shall notify the Judge of the Circuit in which such bank or banks may be situated of each and every bank failing to comply with the requirements of the first Section of this Act, whose duty it shall be to appoint a suitable person as receiver of each of the aforesaid banks, who shall, after having filed a bond, with good and sufficient security, to be approved by the said Judge, take charge of the property and assets of the bank.

"SEC. 3. That the said Receiver shall furnish the Comptroller General with a full statement of all the property and assets belonging to the said bank, immediately after receiving the same, and shall proceed to the final settlement of the accounts of the bank, in conformity to such rules as the Circuit Court may direct.

6 "SEC. 4. * * * * * * *

"SEC. 5. * * * * * * * *

"SEC. 6. * * * * * * * *"

Fourth.

That—as found by the *full* Supreme Court (consisting of the four Justices of the Supreme Court and seven Circuit Judges, under Section 12, Article V, of the Constitution of the State), and as so clearly and succinctly stated in the opinion of the Court delivered by Mr. Justice Gary, in the case of Lord, Receiver, *v.* Bates, Treasurer, (heard at the April Term, 1896, and reported at page 95 of volume 48 of *South Carolina Reports*)—

"The State Bank was incorporated as a banking institution prior to the late war.* In order to prevent confusion, it may be well to state at the outset that the State Bank was a private banking corpora-

*See the Acts of Incorporation and Renewals recited in paragraph "*First*" of this Petition.

tion, and the Bank of the State was a public corporation established for the benefit of the State.

"Upon the siege of the City of Charleston, in 1863, the assets of the State Bank were removed to the town of Camden, where in 1865 they were taken from the agent of the bank by soldiers in the invading army of Gen. Sherman, then passing through the State.

"In 1869, an Act was passed entitled, 'An Act to enable the banks of the State to renew business or to place them in liquidation.'* Prior to the passage of said Act, George Garvin, a creditor of the State Bank, filed a creditor's bill against The President, Directors and Company of the State Bank, alleging the insolvency of the bank. In pursuance of the provisions of said Act the Attorney General intervened in that cause, and upon his motion an order was made appointing James B. Betts receiver of all the assets of the bank.

"Among the assets of the bank which were taken from the agent at Camden, as aforesaid, were one hundred bonds of the State of South Carolina, issued in aid of the Blue Ridge Railroad,
7 under an Act of the Legislature passed in 1854,† numbered from 801 to 900, and each of the denomination of $1,000.

"Nineteen of said bonds had been recovered by the bank before the appointment of said receiver.

"At the next term of the Court an order was entered reciting that it was made in pursuance of the Act of 1869, aforesaid, whereby the receiver was required by advertisements in the cities of Charleston, Columbia and New York to call upon all persons having claims against the bank to present them to him, 'on or before 12 M. of Saturday, December 31st, 1870, or be debarred from the benefits of the final settlement of the accounts of the said bank.' This order also enjoined the Treasurer from paying either the principal or interest upon any of the eighty-one bonds remaining outstanding to any person except to the said receiver. The receiver was ordered in his advertisements to call upon all persons holding any of these bonds to present the evidence of their right to them, and he was required to report the claim and the evidence of them at the February Term, 1871. A copy of this order was served on the Treasurer.

"Mr. Betts, the receiver, having died, on motion of the Attorney General, Benjamin C. Pressley was appointed in his place, February 4, 1876, and Mr. Pressley having been elevated to the bench, on motion of the Attorney General, Mr. Samuel Lord was appointed in his place by order of the Court, May 4, 1878. Upon entering on his duties as receiver, Mr. Lord discovered that while the order of the 20th of April, 1870, had enjoined the *payment* of the bonds mentioned it had not enjoined the *funding* of them under the Conversion Act of 1869, or under the Consolidation Act of 1873, and that in the meanwhile several of these bonds had been funded, and were thus lost to the receiver. Another order was thereupon made by the Court on the 30th July, 1878, enjoining the State Treasurer from *funding or consolidating* any of the remaining outstanding bonds. None of these bonds have been since knowingly funded or paid by

*See the Act set forth in paragraph "*Third*" of this Petition.
†See the Act set forth in paragraph "*Second*" of this Petition.

the Treasurer. Orders for releasing the injunction, and for the funding of specific bonds as they were recovered from time
8 to time, had been made in each instance, until the 23d of November, 1883, when the injunction was modified so as to allow the receiver to fund the bonds recovered by them without further special orders. Sundry more of these bonds having been recovered from time to time were under the last order funded by the receiver, and the proceeds distributed under the orders of the Court.

"The charter of the State Bank expired in 1874 and was not renewed.

"Edward Sebring, President of the Bank, died in 1880, leaving Charles Kerrison as sole surviving director and trustee. The original plaintiff, George Garvin, abandoned the conduct of the action. On the — day of June, 1894, a supplemental complaint was filed by Robert D. Mure and W. I. Middleton, surviving copartners of the firm of Robert Mure & Co., and Edward McCrady and Alfred Chisolm, executors of William C. Bee, deceased, against Charles Kerrison, sole surviving director and trustee of the State Bank, and W. T. C. Bates, State Treasurer. Both defendants answer the supplemental complaint. On the 29th June, 1894, His Honor Judge Witherspoon made an order by which the case was referred to Wm. Gibbes Whaley, one of the Masters for Charleston County, to enquire and report which, if any, of the bonds in question had been funded, and which, if any, were still oustanding, unpaid and unfunded, with leave to report any special matter. The Master reported that thirty-eight bonds, which he enumerated by their specific serial numbers, '*are still outstanding and unpaid,*' and '*that the said bonds are the property of the late corporation known as the President, Directors and Company of the State Bank, and that the receiver of the said corporation is the only person entitled to fund and collect the same from the Treasurer of the State.*' Upon the hearing of the cause on the 21st August, 1894, the Hon. O. W. Buchanan, Attorney General, appearing for the State Treasurer, His Honor Judge Witherspoon entered an order confirming the report as follows: '*I further find that the said bonds so claimed in the supplemental complaint and found in the supplemental report to be outstanding and unfunded* to wit: (then follows an enumeration of the bonds,) *are the property of the President, Directors and Company of the State Bank, and that*
9 *the receiver of the said corporation is the only person entitled to fund and collect the same from the Treasurer of the State.*' From this order there was no appeal."

Fifth.

That, by an order of the Circuit Court in the said suit of George Garvin against The President, Directors and Company of the State Bank and the said supplemental proceedings thereunder, dated and filed the 24th day of March, 1899, your petitioner was appointed as receiver in the place and stead of the said Samuel Lord.

Sixth.

That, by an Act of the General Assembly of the said State, entitled *"An Act to limit the time in which coupon bonds payable to bearer and their coupons of the State may be consolidated, converted, funded or paid, and to repeal conflicting laws,"* and approved the 25th day of February, A. D. 1896, (Stat. of So. Ca., Vol. 22, p. 183), it was enacted as follows:

"SECTION 1. *Be it enacted* by the General Assembly of the State of South Carolina, That, after the approval of this Act, no coupon bond of this State payable to bearer nor any coupon thereof shall be consolidated, converted, funded or paid *by the State Treasurer* after the expiration of twenty years from the date of maturity of such bonds.

"SEC. 2. That this Act shall take effect immediately after its approval; and all Acts and parts of Acts inconsistent with this Act are hereby repealed."

Seventh.

That—the said debt of the State (which had been evidenced by the said lost or destroyed *"one hundred bonds of the State of South Carolina, issued in aid of the Blue Ridge Railroad, under an Act of the Legislature passed in 1854, numbered from 801 to 900, and each of the denomination of $1,000,"* and which bonds were *"among the assets of the bank which were taken from the agent at Camden,"* as aforesaid) having matured on the 1st day of July, A. D. 1879—your petitioner, *"after the expiration of twenty years from the date of maturity of such bonds,"* to wit, after the 1st day of July,
10 A. D. 1899, made application to the General Assembly to have the said balance of the said lost or destroyed one hundred bonds, which *"are still outstanding and unpaid"* as aforesaid, consolidated, converted, funded and paid—there being then no longer any fear (in view of the said Act of 1896) that, if such application of your petitioner was granted, any one other than your petitioner claiming to hold and own the same could by presenting them to the State Treasurer have them consolidated, converted, funded and paid, and thus that they would be *twice* consolidated, converted, funded and paid.

That the said balance of the said lost or destroyed one hundred bonds (which *"are still outstanding and unpaid"* as aforesaid) have been and are still carried on the books of the State Treasurer as a debt of the State, and thereby are *evidenced.*

That the Governor in his annual messages to the General Assembly in 1900, 1901 and 1902, in compliance with Section 15 of Article IV of the Constitution of the State, did "recommend for its consideration" this matter as follows:

(1.) *The Governor's Annual Message to the General Assembly in 1900.*

"The Treasurer of the State has called my attention to the fact that there are a number of old bonds which have hitherto been reported as fundable but which under the Act of 1896* are now no longer so, and among them are the bonds claimed by the State Bank (Blue Ridge Railroad Bonds of 1859) to the amount of $37,000. The Act of 1896, referred to, prohibits the State Treasurer from funding or paying any bonds after the expiration of twenty years from the date of maturity. The bonds above mentioned matured on July 1st, 1879, and the twenty years' limitation expired on July 1st, 1899.

"These bonds it may be recollected have been the subject of several applications to the General Assembly for permission to fund them without the surrender of the bonds themselves. One hundrred thousand dollars of these bonds were, it is alleged, plundered and taken from the Bank in February, 1865, by the Federal troops in their march through the State. They have from that time been constantly claimed by the Bank, the Receiver of which obtained an injunction from the Courts as early as 1870 restraining the Treasurer of the State from paying principal or interest of any of them to any one but the Receiver, and under that injunction all of these bonds but the thirty-seven now remaining upon the Treasurer's books have from time to time been recovered by the Receiver of the Bank and by him funded. No one has during the thirty years since the injunction has been in force claimed the bonds in question, and the Courts of the State have declared that they are the property of the State Bank and that the Receiver of the Bank is the only person entitled to fund and collect them from the Treasurer of the State.

11

"The State owes these bonds to some one, and the objection which the General Assembly has hitherto had to the funding of them has been it is understood the fear that some one might still produce and present them to the Treasurer for funding under the funding Acts of the State, and that the State might in this way have to pay them twice. This objection seems now removed, as no one but the Receiver of the Bank has the right to ask to have them funded, all other persons being now barred by the Statute from applying to the Treasurer for that purpose. But however this may be, some action must now be taken in regard to them. They can no longer be carried on the books of the Treasurer as bonds fundable. It rests with the General Assembly to say what must be done in the matter."

(See Senate Journal and House Journal of 1900.)

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*See the Act set forth in paragraph "*Sixth*" of this Petition.

(2.) *The Governor's Annual Message to the General Assembly in 1901.*

"In my Annual Message to the last General Assembly I asked their attention to the condition of certain bonds to which mine had been called by the Treasurer, to wit, thirty-seven (37) bonds of $1,000 each, issued by the State in 1859 in aid of the Blue Ridge Railroad and which have heretofore been carried on the Treasurer's books as 'Old Bonds Fundable,' but which can now be no longer so carried. These bonds among others, it has been established in the Courts, were plundered and rifled from one of the old banks of this State—known as the State Bank—by Sherman's army in its march through the State in 1865. Notice was immediately given of the loss of the bonds to the Treasurer, and that officer was cautioned not to recognize any one presenting them as the owner.

"Under the Act of 1869 requiring the old banks to resume business or go into liquidation, the Attorney General of the State had this bank put into the hands of a receiver, and so the winding up of its affairs has been from that time under the direction of the Attorney General. Upon his motion in 1870 an injunction was issued enjoining the Treasurer from paying any of these bonds without the sanction of the Courts. All but the said thirty-seven bonds, or thirty-eight, for there seems to be some question as to one, have been from time to time recovered and funded, and the proceeds distributed under the direction of the Courts.

"There have been several applications to the Legislature for leave to fund the said thirty-seven or thirty-eight bonds, and proceedings in the Courts were had for *mandamus* to require the Treasurer to do so without further action of the Legislature. In all of these the merits of the case have been thoroughly investigated, and the
12 Courts have declared the bank the owner of the bonds, and its receiver the only person entitled to fund them. In the *mandamus* proceedings, in which all the Judges in the State were called to sit *en banc,* (though all but two ultimately decided that the Treasurer was not authorized to fund without special action of the Legislature, two holding that he was and that the receiver was entitled to have the lost bonds funded without such action) the Judges were unanimous as to the merits of the claim. Previous Legislatures have hesitated to allow the bonds to be funded, fearing that some one might possibly turn up with the bonds, and claim to own and fund them as an innocent holder. But as I pointed out last year this danger is now removed, as in this case the twenty years from maturity, during which these bonds might have been funded by the Treasurer upon their presentation and delivery to him by any such holder, expired on the 1st of July, 1899, and any such holder is now barred under the Act of 1896.

"Under these circumstances, the claim of the bank to be allowed to renew and fund these bonds in my judgment is valid and just, and should be allowed. It is not denied that the State owes the bonds to some one—they are carried as part of the old debt of the State on the books of the Treasurer as owing to some one—the Courts

have decreed the bank to be the owner—no one else can now claim them, as all persons but the bank are barred under the Act of 1896 from doing so. It seems to me that in the face of these facts it will be a little short of repudiation if we continue to refuse to allow the receiver of the bank to fund these bonds.

"In some States, provision is made for the renewing of lost or destroyed bonds, without requiring action of the Legislature in specific cases; it might be wise in this State to make a similar provision, as the renewing of such lost evidence of indebtedness should be a matter of judicial rather than legislative inquisition and remedy; and for the further reason that everything which adds assurance to the creditor that he will be paid even though he loses the paper evidence of his debt adds to the credit of the State.

"I have gone somewhat into the merits of this matter as I cannot but feel that the credit and honor of the State are now to some extent involved. I earnestly recommend it to the attention of the General Assembly as one upon which some action should be taken, for the bonds can no longer be carried on the Treasurer's books as 'Old Bonds Fundable.'"

(See Senate Journal and House Journal of 1901.)

(3.) *The Governor's Annual Message to the General Assembly in 1902.*

"In my messages of the last two years I have upon each occasion called your attention to the subject of certain bonds, which by the Treasurer's reports appear as part of the old debt of the State, but which are now under the Act of 1896 no longer fundable by the Treasurer without the action of your honorable bodies. From your journals I learn that my message upon the subject was re-
13 ferred to a joint committee which reported thereon, but which report was not adopted by the Senate and no action taken thereon by the House of Representatives. The Treasurer calls attention to these bonds and says: 'I find on the books of this department certain bonds as part of the debt of the State, entered as Old Bonds Not Fundable (Act of 1896) Blue Ridge Railroad Bonds, $37,000. These bonds were issued in 1859 and matured in 1879. By the Act of 1896 the Treasurer is forbidden to pay, consolidate or fund any coupon bond of the State after the expiration of twenty years from the date of maturity of such bonds. I am in doubt as to how longer to report these bonds. If they are no longer fundable, why carry them longer as a part of the debt of the State? But while on the one hand the Treasurer can neither pay nor fund them, on the other he has no authority to write them off the books.' This letter was referred to the Attorney General for his opinion, and in reply he submits a full and complete opinion concluding as follows: *'I am of opinion that the bonds in question constitute an existing adjudicated part of the debt of the State and as such can only be disposed of by some Act of the Legislature.'**

* See the opinion of the Attorney General transmitted to the General Assembly by the Governor in his Message at page 63 of House Journal of 1902.

"Thus confirmed in my opinion and views upon the subject by the legal officer of the State, I cannot do otherwise than repeat my recommendation of last year, viz.: that the claim of the Bank to be permitted to renew and fund these bonds is valid and just and should be allowed. It is not denied that the State owes the bonds to some one. They are carried as part of the debt of the State on the books of the Treasurer, as owing to some one. The Courts have all decreed the Bank to be the owner; no one else can now claim them, as all persons but the Bank are barred under the Act of 1896 from doing so. I repeat, in the face of these facts, it will be little short of repudiation if we continue to refuse to allow the Receiver of the Bank to fund them."

(See Senate Journal and House Journal of 1902.)

That, *notwithstanding,* the General Assembly not only failed to pass an Act in compliance with your petitioner's said application to it (the General Assembly) as aforesaid, but also actually passed in 1902 (*ratified* 22nd February, 1902, on which day the General Assembly adjourned *sine die*) the following so-called Joint Resolution, the same having originated in the Senate:

"*A Joint Resolution to authorize and require the State Treasurer to write off of the books in his office certain bonds entered on said books as Old Bonds not Fundable (Act of 1896), Blue Ridge Railroad Bonds, $37,000.*

14 "*Be it Resolved* by the General Assembly of the State of South Carolina:

"SECTION 1. That whereas, by an Act of the Legislature of 1896, the Treasurer of this State is forbidden to pay, consolidate or fund any coupon bond of the State after the expiration of twenty years from the date of maturity of such bonds, and certain bonds entered on the books of the State Treasurer as 'Old bonds not fundable Act of 1896), Blue Ridge Railroad Bonds, $37,000,' are still carried on the books of the State Treasurer. Therefore, be it Resolved: That the State Treasurer be, and he is hereby, authorized and required to write said bonds off of the books in his office, and no longer carry said bonds on the books *as a debt of the State.*

(See page 561 of Senate Journal and pages 690-1 of House Journal of February 22, 1902.)

Eighth.

That the said so-called Joint Resolution having been presented to the Governor, and the General Assembly having, by adjournment, prevented its return within three days after it had been presented to him, he sent it (unapproved and unsigned by him and with his objections) to the Senate within two days after the meeting of the *new* General Assembly, which met and organized on Tuesday the 13th day of January, A. D. 1903, *to wit, on* Wednesday the 14th day of January, A. D. 1903, as follows:

STATE OF SOUTH CAROLINA,
EXECUTIVE CHAMBER,
COLUMBIA, *January* 13, 1903.

To the President of the Senate:

I herewith return to the Senate, "Joint Resolution to authorize and require the State Treasurer to write off of the books in his office certain bonds entered on said books as old bonds not fundable, Act of 1896, Blue Ridge Railroad bonds, $37,000," with my objections.

In pursuance of the requirements of the Constitution, that the Governor shall, from time to time, give to the General Assembly information of the condition of the State, and recommend for its consideration such measures as he shall deem necessary or convenient, I have deemed it my duty upon several occasions before to call to the attention of the General Assembly the matter of the bonds, the subject of the Joint Resolution herewith returned, and to urge the propriety and justice of providing for the funding of the same by the Treasurer of the State. My recommendation in the matter has not been followed; but, on the contrary, the Joint Resolution in question, directing the Treasurer to write off the bonds from the books of the State, was sent me on the day before the adjournment of the last General Assembly, the adjournment thus preventing its return to that body. In pursuance of the provision of the Constitution in such case, I now return the same to the Senate, the body in which it originated.

Upon reading the Resolution, a doubt occurred to me whether it was not in violation of the Constitution of the United States, which prohibited the passing of any law impairing the obligation of contracts; and, therefore, before considering it further, I requested the opinion of the Attorney General as to its constitutionality, and also as to what effect it would have if it should be approved or become a law. I append hereto the opinion of that officer upon the subject.

From this opinion it appears that while he did not regard the Resolution as unconstitutional, as it does not in his opinion impair the obligation of the contract of these bonds, he is of the opinion that the Resolution can have no legal effect upon those claiming any right in the bonds, nor does it preclude them from again petitioning the Legislature for relief. In other words, as I understand, that the Joint Resolution is not unconstitutional simply because it is ineffectual and useless. Though this may be true, and the Resolution, therefore, not technically unconstitutional, I cannot blind myself to the fact that it would have the appearance, at least, of repudiation, and I fear practically that effect. I can see no good to be accomplished by it and will not approve it.

Respectfully submitted,

M. B. McSWEENEY, *Governor.*

(See Senate Journal of Wednesday, January 14, 1903.)

That on the 19th day of February, 1903, the Senate, by a vote of 25 to 11 out of a total membership of 41, attempted to agree to pass the said so-called Joint Resolution, the veto of his Excellency the

Governor to the contrary notwithstanding, but immediately thereupon attempted to reconsider its said attempted action (see *Senate Journal of 19th of February, 1903*)—and that on the 20th day of February, 1903, (the last day but one of the session) the Senate, by a vote of 28 to 13, again attempted to agree to pass the said so-called Joint Resolution, the veto of his Excellency the Governor to the contrary notwithstanding. (See *Senate Journal of 20th February, 1903.*)

That, thereupon, the said so-called Joint Resolution was sent, together with the objections, to the House of Representatives, by which House immediately on the very same day, to wit, the 20th day of February, 1903, by a vote of 60 to 25 out of a total membership of 124, it was attempted to be approved, the veto of his Ex-
16 cellency the Governor to the contrary notwithstanding. (See *House Journal of 20th February, 1903.*)

And that it is contended that the said so-called Joint Resolution has the same effect as if it had been signed by the Governor, and has become and is a law.*

Ninth.

That the said so-called Joint Resolution is unconstitutional, null and void, and that it has not the same effect as if it had been signed by the Governor, and did not become and is not a law, because it is repugnant to and in violation of

1. Section 8 of Article I of the Constitution of the State of South Carolina, which provides that "*No * * . . law impairing the obligation of contracts * * shall be* passed * *"—*and also* the first clause of Section 10 of Article I of the Constitution of the United States of America, which provides that "*No State shall * * pass any * * law impairing the obligation of contracts * **"—

2. Section 16 of Article III of the Constitution of the State of South Carolina, which provides that "*The style of all laws shall be: 'Be it enacted by the General Assembly of the State of South Carolina.'*"—and

3. Section 23 of Article IV of the Constitution of the State of South Carolina, which requires (*a*) *two-thirds of each house* (*i. e.* two-thirds of *all the members, not* of a *constitutional quorum,* of each house) to pass a bill or joint resolution that has been unapproved and unsigned by the Governor—and (*b*) a *re*-turn to and *re*-consideration by *the same, not* a *new,* General Assembly of such a bill or joint resolution.

Wherefore your petitioner, asking the aid of this honorable Court, prays that a writ or order of injunction be issued perpetually
17 enjoining and restraining the State Treasurer, the respondent herein, from writing the said $37,000 of State Bonds off of the books in his office and no longer carrying said bonds on the

*See the said so-called Joint Resolution, No. 173, at page 266 of "*Acts and Join Resolutions of the General Assembly of the State of South Carolina, passed at the regular session of 1903*—printed by order of the General Assembly and designed to form a part of the twenty-fourth volume of the Statutes at Large, commencing with the Acts of the Regular Session of 1903."

books as a debt of the State (as the said so-called Joint Resolution would seek to authorize and require him to do), and that, pending this proceeding and until further order of the Court, he be temporarily restrained from so doing—*or else*, that, if the State Treasurer has already written the said bonds off of the books in his office, a writ or order of injunction be issued commanding him to restore the said bonds to the books in his office and to carry them on the books as a debt of the State and perpetually enjoining and restraining him from thereafter writing them off of the books and no longer carrying them on the books as a debt of the State, and that, pending this proceeding and until further order of the Court, he be so commanded and restrained temporarily.

And that your petitioner may have such further or other relief, or both, as shall be just and meet. And your petitioner will ever pray, &c.

McCRADYS & BACOT,
JULIAN MITCHELL, JR.,
SMYTHE, LEE & FROST,
Attorneys of the Petitioner.

STATE OF SOUTH CAROLINA, *County of Charleston, ss:*

H. A. M. Smith, the petitioner within named, being duly sworn, says that the foregoing petition is true of his own knowledge.

H. A. M. SMITH.

Sworn to and subscribed before me this 17th day of March, A. D. 1903.

[SEAL.] SAMUEL S. BUIST,
Notary Public, S. C.

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 19 March, 1903. U. R. Brooks, Clerk.

18 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

H. A. SMITH, as Receiver of the Late Corporation Named and Styled "The President, Directors and Company of the State Bank," but Commonly Called "The State Bank," and Located in the City of Charleston in the State of South Carolina, Petitioner,

vs.

R. H. JENNINGS, as Treasurer of the State of South Carolina, Respondent.

Application for Writ or Order of Injunction.

Upon the petition (herewith submitted) of the above named H. A. M. Smith, as Receiver as aforesaid, and on motion of McCradys & Bacot, Julian Mitchell, Jr., and Smythe, Lee & Frost, attorneys of the petitioner—

It is Ordered, That the above named R. H. Jennings, as Treasurer as aforesaid, do show cause to the Supreme Court of the State of South Carolina on the first day of its next ensuing Term, to wit, Tuesday, the 21st day of April, 1903, why a Writ or Order of Injunction should not issue as prayed in said petition—and that, in the meantime and until further order of the Court, he the said Treasurer be temporarily restrained from writing the $37,000 of State Bonds (referred to in the said petition) off of the books in his office and no longer carrying them the said Bonds on the said books, as a debt of the State: or else, that, if he the said Treasurer has already written them the said Bonds off of the said books, he be commanded to restore them the said Bonds to the said books, and to carry them the said Bonds on the said books as a debt of the State, and also be temporarily restrained from thereafter writing them the said Bonds off of the said books and no longer carrying them the said Bonds on the said books as a debt of the State.

Let this order and the said petition be served upon the said R. H. Jennings, as Treasurer as aforesaid, and be filed with the Clerk of the Court.

Y. J. POPE,
Chief Justice of the Supreme Court of South Carolina,
at Chambers, 19th March, 1903.

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 19 March, 1903. U. R. Brooks, Clerk.

19 THE STATE OF SOUTH CAROLINA:

In the Supreme Court.

H. A. M. SMITH, as Receiver of the Late Corporation Named and Styled "The President, Directors and Company of the State Bank," but Commonly Called "The State Bank," and Located in the City of Charleston, in the State of South Carolina, Petitioner.

vs.

R. H. JENNINGS, as Treasurer of the State of South Carolina, Respondent.

Return.

By way of return to show cause why a writ or order of injunction should not issue as prayed for in the above entitled action, R. H. Jennings, as Treasurer of the State of South Carolina, respondent, respectfully demurs to the petition herein because it does not state facts sufficient to constitute a cause of action, in that

1. The Joint Resolution, ratified February 22d, 1902, entitled "A Joint Resolution to authorize and require the State Treasurer to write off of the books in his office certain bonds entered on said books as old bonds not fundable (Act of 1896) Blue Ridge Railroad Bonds, $37,000, is merely a direction to the State Treasurer as to a question

of bookkeeping, and does not, therefore, impair the obligation of a contract.

2. *a.* The phrase contained in Section 23, Art. IV., of the Constitution, "Be it enacted," etc., is merely directory.

b. For the purpose of legislation of this nature, "Be it resolved" is a legal style, for the legislation is simply an expression of the General Assembly for administrative purposes of a temporary character.

20 3. Section 23, Art. IV, of the Constitution of the State, requiring two-thirds of each House to pass a Joint Resolution over the Governor's veto, refers to two-thirds of a legal quorum of each House. The Joint Resolution was properly returned to and reconsidered by the session of the General Assembly of 1903, as the measure was ratified, as stated in the petiton, on the day the General Assembly of 1902 adjourned *sine die.*

U. X. GUNTER, JR.,
Attorney General, for Respondent.

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 21 April, 1903. U. R. Brooks, Clerk.

21 SMITH, Receiver,
v.
JENNINGS, Treasurer.

1. Joint Resolution—Judicial Question—Senate.—Whether the Senate had the right to *reconsider* a vote of that body on the passage of a joint resolution over the Governor's veto, is not a judicial question, but one governed by the rules of the body.
2. *Ibid.*—House of Representatives—Constitution.—Under sec. 23, art. IV., of Constitution, two-thirds of the members of the House of Representatives present in a lawfully constituted session are sufficient to pass a joint resolution over the veto of the Governor.
3. *Ibid.—Ibid.—Ibid.*—Senate—Governor.—Under sec. 23, art. IV., the Senate and House of Representatives are continuing entities, and the Governor properly returned a joint resolution vetoed by him to the "House" in which it originated upon reassembling at next session, although an election had intervened and new members had been elected to and taken their seats in such "House," and it had authority to consider the resolution.
4. *Ibid.*—Constitution.—Although art. III., sec. 16, of Constitution, requiring all laws to be styled, "Be it enacted, &c.," is mandatory, still a joint resolution enacted by the words, "Be it resolved, &c.," is a sufficient compliance with such requirement. Requisites of a joint resolution stated.

5. *Ibid.—Ibid.*—Contracts.—A joint resolution directing the State Treasurer to write off his books as obligations of the State certain past due bonds not paid, is not a law impairing the obligation of a contract, in the sense of the State and Federal Constitutions, but a simple instruction to the State treasurer in the matter of bookkeeping.

Petition for injunction in the original jurisdiction of this Court by H. A. M. Smith, receiver of the president, directors and company of the State Bank, against R. H. Jennings, State treasurer.

Messrs. McCradys & Bacot, Julian Mitchell, Jr., and Smythe, Lee & Frost, for petitioner, cite: *The resolution impairs the obligation of contract:* 3 Ency., 1 ed., 748; 15 Ency., 2 ed., 1033, 1040, 1047-8, 1050; Cool. Con. Lim., 6 ed., 329-30; 4 S. C., 430; 12 S. C., 200; 4 Pet., 514; 96 U. S., 432; 102 U. S., 672; 12 Rich. Eq., 498;
22 15 How., 304; 1 S. C., 63; 15 How., 304; 15 Rich. L., 84; 21 S. C., 414; 2 Pet., 627; 4 Wheat., 122; 6 How., 301; 96 U. S., 595; 135 U. S., 662; 12 Wheat., 213. *As to the enacting words:* 10 Nev., 250; 73 Minn., 203. *It was not passed by requisite vote:* Con. 1895, art. IV., sec. 23; Con. 1868, sec. 7, art. IX., art. XVI.; 4 S. C., 430; 12 S. C., 200; Con. 1895, sec. 11, art. III.

Attorney General U. X. Gunter, Jr., contra, cites: *Requisites of joint resolution:* Art. III., sec. 18; art. IV., secs. 17, 23. *As to compliance with constitutional requirements:* 23 Ency., 163; End. on Int. of Statutes, secs. 536, 234; Suth. on Stat. Con., secs. 60-65; 40 Miss., 293; 16 Ind., 49; 52 Mo., 426; 86 N. W., 956. *The two-thirds of the House necessary to pass resolution over veto means two-thirds of quorum:* Art. III., sec. 2; art. XV., sec. 1; art. XVI., sec. 1; 4 S. C., 431; 12 S. C., 200.

September 10, 1903.—The opinion of the Court was delivered by Mr. Justice JONES: This is an application in the original jurisdiction of this Court for an order restraining the State treasurer from acting pursuant to a joint resolution of the General Assembly, which requires the State treasurer "to write off of the books in his office and no longer carry on the books as a debt of the State" certain bonds entered on the books of the State treasurer as "Old bonds not fundable (act of 1896) Blue Ridge Railroad bonds, $37,000." The petitioner attacks the constitutionality of said joint resolution upon several grounds, issue thereof being made by demurrer of respondent to the petition. We will not undertake to set out in detail the allegations of the petition. It is sufficient to say that the bonds referred to are the "lost bonds" which the receiver of "The State Bank" unsuccessfully sought to have funded on the case of Samuel Lord, receiver, *v.* W. T. C. Bates, State treasurer, 48 S. C., 95, and
23 that the petitioner, H. A. M. Smith, as receiver, succeeds to all the rights of said bank with respect to said lost bonds.

The joint resolution is as follows:

"A Joint Resolution to authorize and require the State treasurer to write off of the books in his office certain bonds entered on said books as 'Old Bonds not Fundable (Act of 1896), Blue Ridge Railroad Bonds, $37,000.'

"Be it Resolved by the General Assembly of the State of South Carolina:

"SECTION 1. That whereas by an act of the legislature of 1896, the treasurer of this State is forbidden to pay, consolidate or fund any coupon bonds of the State after the expiration of twenty years from the date of maturity of such bonds, and certain bonds entered on the books of the State treasurer as 'Old bonds not fundable (act of 1896), Blue Ridge Railroad bonds, $37,000,' are still carried on the books of the State teasurer. Therefore, be it *Resolved:* That the State treasurer be, and is hereby, authorized and required to write said bonds off of the books in his office, and no longer carry said bonds on the books *as a debt of the State.*" Stat. 1903, 24 Stat., p. 266.

It is claimed that this joint resolution has not the force of law, and violates the following constitutional provisions:

1. Sec. 23, of article IV., of the Constitution of the State of South Carolina, which requires (*a*) *two-thirds of each house* (*i. e.*, two-thirds of *all the members, not* of a *constitutional quorum* of each house,) to pass a bill or joint resolution that has been unapproved and unsigned by the governor; and (*b*) a *re*-turn to and *re*-consideration by *the same, not* a *new,* General Assembly of such bill or joint resolution.

2. Sec. 16, of article III., of the Constitution of the State of South Carolina, which provides that *"The style of all laws shall be: 'Be it enacted by the General Assembly* of the State of South Carolina.'" And

3. Sec. 8, of art. I., of the Constitution of the State of South Carolina, which provides that *"No * * * law impairing the obligation of contracts * * * shall be passed * * *;"*

24 *and also* the first clause of section 10, of article I., of the Constitution of the United States of America, which provides that *"No State shall * * * pass any * * * law impairing the obligation of contracts * * *"*

1. The question presented under sec. 23, art. IV., of the Constitution, is whether the language, "two-thirds of that house," means two-thirds of the total membership of the Senate which consists of forty-one members, and two-thirds of the total membership of the House of Representatives, which consists of one hundred and twenty-four members, or means two-thirds of the members of each of said bodies voting upon the question, a quorum being present. The joint resolution was passed by the General Assembly on February 22d, 1902, on which day the regular session of 1902 adjourned *sine die.* The joint resolution having been presented to the governor, and the General Assembly having by adjournment prevented its return within three days, the governor sent it unapproved and unsigned and with his objection to the Senate, where it originated, within two

days after the meeting of the General Assembly which convened on Tuesday, the 13th day of January, 1903. On the 19th day of February, 1903, the Senate by a vote of twenty-five to eleven, out of a membership of forty-one, passed the joint resolution, the veto of his excellency the governor to the contrary notwithstanding; but immediately thereupon reconsidered its said action, and on February 20th, 1903, passed the joint resolution over the governor's veto by a vote of twenty-eight to thirteen. Thereupon the joint resolution, together with the governor's objection, the veto, was sent to the House of Representatives, which body on same day, February 20, 1903, by a vote of sixty to twenty-five, out of a total membership of one hundred and twenty-four, passed the joint resolution over the governor's veto.

Treating a vote upon the passage of the joint resolution over the governor's veto as upon the reconsideration of the original resolution, it is not a judicial question whether the Senate had the right
25 to reconsider the vote upon such reconsideration. That is merely a matter of parliamentary procedure which each body by special rule may, and usually does, regulate for itself. As a judicial question we accept the result as shown by the Senate Journal of February 20, 1903, and set forth in the petition, as one reached in accordance with the rules of the body. So that it appears that the Senate's action is unquestionable under either construction of the Constitution. Our further consideration of this question will, therefore, be confined to the action of the House of Representatives.

While the Constitution in art. III., sec. 3, declares that the House of Representatives shall consist of one hundred and twenty-four members, it also declares in sec. 4, art. III., that a majority of each house shall constitute a quorum to do business. A quorum, therefore, possesses the power of the whole body in all matters of business wherein the action of a larger proportion of the entire membership is not clearly and expressly required. So, ordinarily, when a quorum is present acting, the "House" is present acting in all its potentiality. When the Constitution speaks of "two-thirds of that house" as the vote required to pass a bill or joint resolution over the veto of the governor, it means two-thirds of the house as then legally constituted and acting upon the matter. Whenever the framers of the Constitution intended otherwise, the purpose was expressly declared, as in art. XV., sec. 1, "a vote of two-thirds *of all members* elected shall be required for an impeachment," and in art. XVI., sec. 1, where in proposing amendments to the Constitution, "two-thirds of the members *elected* to each house" must agree thereto. Questions like this arose under the Constitution of 1868, and were decided in accordance with the view we take. Morton, Bliss & Co. *v.* Comptroller General, 4 S. C., 462; Bond Cases, 12 S. C., 285. See, also, Cooley's Constitutional Limitations, 5th ed., p. 170; State *v.* McBride, 4 Mo., 303, 29 Am. Dec., 636. As the house at the time of the passage of the joint resolution was lawfully constituted with eighty-five members present, and as sixty of these voted for its
26 passage, the vote was "two-thirds of that house," in the sense of sec. 23, of art. IV., of the Constitution.

With respect to the point made under sub-division (*b*) above, we do not think it tenable. Sec. 23, art. IV., requires that the governor shall return a bill or joint resolution, which he does not approve, with his objections, to the house in which it originated, which house shall proceed to reconsider it. "If after such *reconsideration* two-thirds of that house shall agree to pass it, it shall be sent, together with the objections, to the other house, by which it shall be *reconsidered,* and if approved by two-thirds of that house, it shall have the same effect as if it had been signed by the governor." The point is made that the General Assembly of 1903 was a new General Assembly, composed of the members elected in the general election in the fall of 1902, and that the Constitution contemplates a return of bill or joint resolution unapproved by the governor to the General Assembly which passed it, as that body alone can properly be said to reconsider the same. Such a construction would destroy the effect of the last provision in said section, as follows: "If a bill or joint resolution shall not be returned by the governor within three days after it shall have been presented to him, Sundays excepted, it shall have the same force and effect as if he had signed it, unless the General Assembly, by adjournment, prevent its return, in which case it shall have such force and effect, unless returned within two days after the *next meeting.*" As the legislature adjourned *sine die* on the day the joint resolution passed, the governor had the right to return the resolution approved within two days after the next meeting of the General Assembly. In the sense of this provision, the Senate and House of Representatives, as composing the General Assembly, are continuing bodies, and as such entities are not affected by the changes made in the particular individuals who may be members thereof. It is the "house" which is to reconsider, not the particular members who participated in the original consid-
27 eration. Furthermore, if petitioner's construction be correct in this regard, then the governor did not return the joint resolution, as required by the Constitution, and in such event it would have the same force and effect as if he had signed it, and our consideration of this branch of the case would be useless.

2. Art. III., sec. 16, of the Constitution declares: "The style of all laws shall be, 'Be it enacted by the General Assembly of the State of South Carolina.'" It is contended by petitioners that the use of the word "resolved" instead of the word "enacted" in the joint resolution, renders it void. We are relieved of any discussion whether this provision of the Constitution is mandatory or merely directory by the declaration in sec. 29, art. I., of the Constitution, that "the provisions of the Constitution shall be taken, deemed and construed to be mandatory and prohibitory and not merely directory, except where expressly made directory or permissory by its own terms." There being nothing in the provision under discussion indicating that it is directory merely, we are bound to hold it as mandatory. Under Constitutions not containing a provision like the one just cited, there is a conflict among the authorities as to whether a provision like art. III., sec. 16, is mandatory or directory. The following cases hold such provisions to be merely directory: McPherson

v. Leonard, 29 Md., 377; City, etc., *v.* Riley, 52 Mo., 424, 14 Am. Rep., 427; Swann *v.* Buck, 40 Miss., 268. In the case last cited, the Court considered whether a joint resolution with enacting words, "Be it resolved, &c.," was void in view of a constitutional provision similar to ours, and held the joint resolution valid, using in part this language: "The word 'resolved' is as potent to declre the legislative will as the word 'enacted.' It is true, that a resolution may or may not take effect as law, depending upon the occasion and object of its use. It may be resorted to as a safe vehicle to convey the opinions or wishes of the legislature on any subject without prescribing any rule of conduct to be observed. Bu' whenever a joint resolution
28 does undertake to lay down a rule of conduct for any portion of the people of the State, it becomes a law, and will take effect as such notwithstanding the use of the word 'resolved' in its style, instead of the word 'enacted.' The requirement of the Constitution is thereby substantially complied with and the will of the legislature sufficiently declared."

On the other hand, the following cases hold such a provision as we have under consideration to be mandatory: May *v.* Rice, 91 Ind., 546; Burritt *v.* Commissioners, 120 Ill., 322, 11 N. E. Rep., 184; State *v.* Patterson, 98 N. C., 660, 4 S. E. Rep., 350; State *v.* Rogers, 10 Nev., 250, 21 Am. Rep., 738; Syoburg *v.* Security, etc., Association, 73 Minn., 203; People *v.* Dettenthaler (Mich.), 77 N. W. Rep., 450, 72 Am. St. Rep., 619. In all these cases, however, there was an absence of any enacting clause, except in the case of State *v.* Rogers, *supra.* In this last mentioned case it appears that the Nevada Constitution provided that: "The enacting clause of every law shall be as follows: 'The people of the State of Nevada represented in Senate and Assembly do enact as follows,' and no law shall be enacted except by bill." The enacting clause of the act in question in that case read: "The people of the State of Nevada represented in Assembly do enact as follows:" omitting the words "Senate and." This was a vital omission, inasmuch as in Nevada the two branches of the legislature were the Senate and Assembly. The enacting clause, therefore, failed to show that the bill or statute was by the authority of *both* branches of the legislature. So that the Nevada case could not be cited to sustain the view that a literal compliance with the mandatory provision of the Constitution was essential. A failure to substantially comply with a mandatory provision is as if no compliance at all was made, and in this view the Nevada case is in line on principle with the other cases cited, which hold the absence of any enacting clause in a statute as a fatal defect. In the Seat of Government Case, 1 Wash. Ter., 115, the Court held that an act of the legislature without an enacting clause was void, although
29 there was no provision in the original act [Constitution] of the Territory prescribing or requiring any enacting clause.

We hold, while the constitutional provision as to form of enacting clause is mandatory, that a substantial compliance with the mandate will be sufficient. We cannot bring our mind to hold that an absolutely literal compliance with the form prescribed is essential to valid legislation. There must be, however, an enacting clause in

appropriate words importing the same as the phraseology prescribed. We are not without authority in this State for such view. In the case of State *v.* Mason, 54 S. C., 241, the Court sustained an indictment which concluded with the words, "against the peace and dignity of the same State aforesaid," instead of the words "against the peace and dignity of the State," as required by the mandatory provision in art. V., sec. 31, of the present Constitution, following State *v.* Robinson, 27 S. C., 618, which sustained an indictment concluding in the words of the indictment in State *v.* Mason, as a substantial compliance with art. IV., sec. 31, of the Constitution of 1868, in terms the same as in art. V., sec. 31, of the present Constitution. Likewise, in the case of State *v.* Hill, 19 S. C., 435, the Court held valid a venire commencing "State of South Carolina, County of Spartanburg. To the Sheriff of Spartanburg County," as a sufficient compliance with the constitutional requirement (art. IV., sec. 31, Constitution 1868), that "all writs and processes shall run in the name of the State of South Carolina." These cases establish the principle that a literal compliance with certain mandatory formulas is not exacted, but that a substantial compliance is sufficient.

Legislation by joint resolution has long been in practice in this country, in Congress and in many of the States of the Union. Joint resolutions, while not always and absolutely confined thereto, are employed in legislation of an administrative kind, in matters of a local or temporary nature, as distinguished from matters of a general or permanent nature, and in this State are most usually employed in directing an officer to do or not to do a particular thing. Such resolutions, however, like ordinary bills, must, in order to have the force of law, (1) contain a title relating to but one subject, which shall be expressed therein; (2) must have an enacting clause showing the authority by which they are promulgated; (3) must be passed in both branches of the legislature, having been read three times on three several days in each house; (4) must be signed by the president of the Senate and speaker of the House of Representatives; (5) must have the great seal of the State attached thereto; (6) must be approved and signed by the governor, or passed over his veto by a two-thirds vote of each house. All these constitutional requirements, it is admitted, have been complied with in the present case. But the word "resolved" was used instead of the word "enacted," in the enacting clause or style. In all our investigation, which has been somewhat extended, we have found no case, and none has been cited, which declares a joint resolution void on such a ground. It is true, Mr. Cushing, in his Law and Practice of Legislative Assemblies, 1819, sec. 2102, says:

"1. Where enacting words are prescribed, nothing can be a law which is not introduced by those very words, even though others which are equivalent are at the same time used.

"2. Where the enacting words are not prescribed by a constitutional provision, the enacting authority must notwithstanding be stated; and any words which do this to a common understanding are doubtless sufficient, or the words may be prescribed by rule. In this respect much must depend upon usage.

"3. Whether where enacting words are prescribed in a resolve or joint resolution can such resolution have the force of law without the use of those very words, is a question which depends upon each individual Constitution, and which we are not called upon at present to settle."

It will be observed that while the broad statement in the first paragraph above seems to be against the view we take, the particular point under consideration in this sense is expressly left open, in so far as Mr. Cushing is an authority, in the third paragraph.

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Legislation by joint resolution came into vogue in this State about the time of the adoption of the Constitution of 1868, which, unlike the Constitution of 1790, authorized legislation by joint resolution. From that time up to the adoption of the Constitution of 1895, joint resolutions were passed at every session of the legislature, and the enacting clause uniformly was, "Be it resolved, &c.," instead of "Be it enacted, &c.," notwithstanding the Constitution of 1868, art. II., sec. 19, declared, "The style of all laws *shall* be, 'Be it enacted by the Senate and House of Representatives of the State of South Carolina, now met and sitting in General Assembly, and by the authority of the same,'" Under the authorities above cited, fortified by the reasoning of Judge Cooley in his Constitutional Limitations, 5th ed., p. 92, *78, such provision in the Constitution of 1898 should be deemed mandatory, yet in all the years that Constitution was of force, no department of government questioned the validity of a joint resolution because "resolved" was used instead of "enacted" in the enacting or resolving clause. After the adoption of the Constitution of 1895, the legislature, in the session of 1896, passed twenty-nine joint resolutions, twenty of which used "Be it enacted, &c.," and nine used "Be it resolved, &c." In the session of 1897, all the joint resolutions used "Be it enacted, &c." In the session of 1898, fifteen joint resolutions used "Be it enacted, &c.," and one used "Be it resolved." In the session of 1899, all joint resolutions ran, "Be it enacted, &c." In the session of 1900, eighteen joint resolutions used "Be it enacted, &c.," and one "Be it resolved, &c." In the session of 1902, one joint resolution said "Be it enacted, &c.," and twenty said, "Be it resolved, &c.," and thirteen used these words: "Be it enacted [resolved], &c.;" and during the session of 1903, four joint resolutions contained the words, "Be it enacted, &c.," while sixteen contained the words, "Be it resolved, &c." Thus it appears that the legislature since the Constitution of 1895 regarded "resolved" as an appropriate word to be used in the enacting clause of a joint resolution, and sanctioned its use as the equivalent of "enacted." Such long continued usage and construction by a co-ordinate branch of the government is persuasive if not conclusive. We quite agree with the Mississippi Court in the statement that "the word 'resolved' is as potent to declare the legislative will as the word 'enacted.'" This must be true with respect to joint resolutions, wherein the use of the word "resolved" is particularly appropriate and customary, and when the Constitution, as does ours, authorizes legislation by joint

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resolution. We, therefore, hold that this joint resolution is not unconstitutional and void on this ground.

3. Both Federal and State Constitutions forbid any law impairing the obligation of contracts. Mr. Black, in his work on Constitutional Law, p. 524, states: "The obligation of a contract is that duty of performing the contract according to its terms and intent which the law recognizes and enforces." "Any law which precludes a recovery for a breach of contract, or excuses one of the parties from performing it, or renders it invalid, or enlarges or abridges the intention of the parties, or postpones or accelerates the time of performance, or interposes such obstacles to its enforcement as practically to annul it, impairs its obligation and is void." At page 538, the same author states: "There is a distinction between the obligation of a contract and the remedy for its inforcement. Whatever pertains merely to the remedy may be changed or modified at the discretion of the legislature without impairing the obligation of the contract; provided, the remedy be not wholly taken away, nor so hampered or reduced in effectiveness as to render the contract practically incapable of enforcement."

The following extracts from decisions of the U. S. Supreme Court will show how that Court interprets the provision under consideration: "The obligation of a contract consists in its binding force on the party who makes it. This depends on the laws in exist-
33 ence when it is made; these are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party and the right acquired by the other. There can be no other standard by which to ascertain the extent of either, than that which the terms of the contract indicate, according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a right to enforce the performance by the remedies then in force. If any subsequent law affect to diminish the duty or to impair the right, it necessarily bears on the obligation of the contract in favor of one party, to the injury of the other; hence any law, which in its operation amounts to a denial or obstruction of the rights accruing by a contract, though professing to act on the remedy, is directly obnoxious to the provisions of the Constitution." McCracken *v.* Hayward, 2 How., 612. "The objection to a law, on the ground of its impairing the obligation of a contract, can never depend upon the extent of the change which the law effects in it. *Any deviation* from its terms, by postponing or accelerating the performance which it prescribes, imposing conditions not expressed in the contract, or dispensing with the performance of those which are, *however minute or apparently immaterial in their effect upon the contract of the parties*, impairs its obligation." Green *v.* Biddle, 8 Wheat., at page 84. "One of the tests that a contract has been impaired is, that its value has by legislation been diminished. It is not, by the Constitution, to be impaired *at all.* This is not a question of *degree* or *manner* or *cause*, but of encroaching *in any respect* on its obligation, dispensing with *any part* of its force." Planters' Bank *v.* Sharpe, 6 How., 301, at page

327. "The obligation of a contract includes *every thing* within its obligatory scope. Among these elements nothing is more important than the means of enforcement. This is the breath of its vital existence. Without it, the contract, as such, in the view of the
34 law, ceases to be, and falls into the class of those 'imperfect obligations,' as they are termed, which depend for their fulfilment upon the will and conscience upon whom they rest. The ideas of right and remedy are inseparable. Want of right and want of remedy are the same thing. 1 Bac. Abr., tit. Actions in General, letter B." Edwards *v.* Kearsey, 96 U. S., 595, at page 600. "The obligation of a contract, in the constitutional sense, is the means provided by law by which it can be enforced—by which the parties can be obliged to perform it. *Whatever legislation* lessens the efficacy of these means, impairs the obligation." Louisiana *v.* New Orleans, 102 U. S., 203, at pages 206-7.

Tested by the principles stated, the joint resolution does not impair the obligation of any contract. It does not amount to a denial or obstruction of any right accruing under the contract, nor does it in the slighest lessen the efficacy of any means provided by law for the enforcement of such right. The mere writing off of the books of the State treasurer the entry referred to in the joint resolution, and directing him no longer to carry such bonds on his books as a debt of the State, is a mere matter of book-keeping on the part of the State's officer which petitioner has no right to control. On February 25, 1896, the legislature passed an act providing: "That after the approval of this act, no coupon bond of this State payable to bearer, nor any coupon thereof, shall be consolidated, converted, funded or paid by the State treasurer after the expiration of twenty years from the date of maturity of such bonds," and this act is in no wise brought in question in these proceedings. Whatever duty devolves upon the State to pay or fund the said bonds, which matured in 1879, and have never been presented for payment or funding, and whatever right petitioner has in regard to such lost bonds, such duty and right cannot be affected by the manner in which the State treasurer is directed to keep his books.

The injunction prayed for is refused, the temporary re-
35 straining order heretofore granted is revoked, and the petition herein is dismissed.

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 10 Sept., 1903. U. R. Brooks, Clerk.

36 In the Original Jurisdiction of the Supreme Court of the State of South Carolina, April Term, 1903.

HENRY A. M. SMITH, as Receiver of the Late Corporation Named and Styled "The President, Directors and Company of the State Bank," but Commonly Called "The State Bank," and Located in the City of Charleston, in the State of South Carolina, Petitioner, Plaintiff in Error,

vs.

R. H. JENNINGS, as Treasurer of the State of South Carolina, Respondent, Defendant in Error.

Application for Writ or Order of Injunction.

Petition for Allowance of a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of South Carolina.

To the Honorable Y. J. Pope, Chief Justice of the Supreme Court of the State of South Carolina:

The humble Petition of Henry A. M. Smith, as receiver of the late corporation named and styled "The President, Directors and Company of the State Bank," but commonly called "The State Bank," and located in the City of Charleston in the State of South Carolina, respectfully shows as follows:

I. That heretofore, to wit, on or about the 19th day of March, A. D. 1903, your Petitioner commenced the above entitled suit by exhibiting and submitting to your Honor, at Chambers, his
37 Petition in writing (duly verified by him) which Petition set forth, *inter alia,*

(1) The original incorporation, and the renewals of the Charter, of the said "The State Bank":

(2) The ownership by the said "The State Bank" of certain Bonds of the State of South Carolina:

(3) The passage by the General Assembly of the State of South Carolina, in the year 1902, of a Joint Resolution authorizing and requiring the State Treasurer "to write said Bonds off of the books in his office, and no longer carry said Bonds on the books as a debt of the State": and

(4) An express averment that the said Joint Resolution "is unconstitutional, null and void, * * * and did not become and is not a law, because it is repugnant to and in violation of * * * the First Clause of Section 10 of Article I of the Constitution of the United States of America, which provides that 'No State shall * * * pass any * * * law impairing the obligation of contracts' "—and which Petition prays that a Writ or Order of Injunction be issued perpetually enjoining and restraining the State Treasurer from writing the said Bonds off of the books in his office and no longer carrying said Bonds on the Books as a debt of the State, *etc.*

II. That thereupon your Honor made an Order (dated, at Chambers, 19 March, 1903) "that the above named R. H. Jennings as

Treasurer as aforesaid, do show cause to the Supreme Court of the State of South Carolina, on the first day of its next ensuing term, to wit, Tuesday the 21st day of April, 1903, why a Writ or Order of Injunction should not issue as prayed in said Petition—
38 and that in the meantime and until further order of the Court, he the said Treasurer, be temporarily restrained from writing the $37,000.00 of State Bonds (referred to in the said Petition) off of the books in his office and no longer carrying them, the said Bonds, on the said books as a debt of the State, *etc.*": and directed that the said Order and the said Petition should be served upon the said Treasurer and be filed with the Clerk of the Court. And that the said Order and the said Petition were served on the said Treasurer and were filed with the Clerk of the Court on or about the 19th day of March, A. D. 1903.

III. That the said respondent Treasurer, by the Attorney General of the State, by way of return to the said Order to show cause, did file on the 21st day of April, 1903, a written Demurrer to the said Petition on the ground that the Petition "does not state facts sufficient to constitute a cause of action."

IV. That the said suit was thereupon heard by the Supreme Court of the State of South Carolina on the 4th day of May, 1903, and that thereafter, to wit, on the 10th day of September, 1903, the said Court filed its decision or final judgment or decree therein, refusing the injunction prayed for, and dismissing the Petition.

V. That the said the Supreme Court of the State of South Carolina, which rendered the said decision or final judgment or decree, is the highest Court of the State of South Carolina in which a
39 decision in the said suit could be had, and that the said decision or judgment or decree is the *final* judgment or decree in the said suit; and that in the said suit there is drawn in question the validity of a Statute of, or any authority exercised under the said State, on the ground of their being repugnant to the Constitution of the United States, and that the said decision is in favour of such their validity and is adverse to the right claimed by the Petitioner, as appears of record.

Wherefore, Your Petitioner prays the allowance by your Honor of the Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of South Carolina, herewith presented, and your Honor's signature to the Citation herewith also presented, upon the accompanying Bond or undertaking. And that your Petitioner may have such further or other order or relief, or both, as may be just and meet. And your Petitioner will ever pray, and so forth.

(Signed) T. W. BACOT,
Att'y of Petitioner.

14th August, 1905.

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 18 Aug., 1905. U. R. Brooks, Clerk.

40 [Endorsed:] Copy. In the original jurisdiction of the Supreme Court of the State of South Carolina. Henry A. M. Smith, as Receiver of the late corporation named and styled "The President, Directors and Company of the State Bank," but commonly called "The State Bank," and located in the city of Charleston in the State of South Carolina, Petitioner, Plaintiff in error, *vs.* R. H. Jennings as Treasurer of the State of South Carolina, Respondent, Defendant in error. Petition for allowance of a Writ of Error from the Supreme Court of the United States to the Supreme Court of the State of South Carolina. Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 18 Aug. 1905. U. R. Brooks, Clerk.

41 Know all men by these presents, That we, Henry A. M. Smith as Receiver of the late corporation named and styled "The President, Directors and Company of the State Bank," but commonly called "The State Bank," and located in the City of Charleston in the State of South Carolina, as principal, and The American Bonding Company of Baltimore, Maryland, as sureties are held and firmly bound unto R. H. Jennings, as Treasurer of the State of South Carolina, in the full and just sum of two hundred and fifty dollars to be paid to the said R. E. Jennings, as Treasurer of the State of South Carolina, his certain attorney, successors in office, or assigns: to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this fourteenth day of August, in the year of our Lord one thousand nine hundred and five.

Whereas, lately at a regular term of the Supreme Court of the State of South Carolina in a suit depending in said Court, between Henry A. M. Smith, as Receiver of the late corporation named and styled "The President, Directors and Company of the State Bank," but commonly called "The State Bank," and located in the city of Charleston in the State of South Carolina, Petitioner, Plaintiff in error, and R. H. Jennings, as Treasurer of the State of South Carolina, Respondent, Defendant in error, a final decision or judgment or decree was rendered against the said Henry A. M. Smith, as Receiver as aforesaid, and the said Henry A. M. Smith, as Receiver as aforesaid, having obtained a writ of error and filed a copy thereof in the Clerk's office of the said Court to reverse the said judgment in the aforesaid suit, and a citation directed to the said R. H. Jennings, as Treasurer of the State of South Carolina, citing and admonishing him to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date thereof.

Now the condition of the above obligation is such, That if the said Henry A. M. Smith, as Receiver as aforesaid, shall prosecute
42 his said Writ of error to effect, and answer all costs if he fail

to make his plea good, then the above obligation to be void; else to remain in full force and virtue.

HENRY A. M. SMITH, *Receiver.* [SEAL.]
THE AMERICAN BONDING COMPANY
OF BALTIMORE, MD.,

[CORPORATE SEAL.]

By T. MOULTRIE MORDECAI,
Att'y in Fact.

Sealed and delivered in presence of—
K. A. GRACE.

Approved by—
Y. J. POPE,
Chief Justice of the Supreme Court
of the State of South Carolina.

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 18 Aug., 1905. U. R. Brooks, Clerk.

43 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the Honorable the Judges of the Supreme Court of the State of South Carolina, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said the Supreme Court of the State of South Carolina before you, or some of you, being the highest court of law or equity of the said State in which a decision could be had in the said suit between Henry A. M. Smith, as Receiver of the late corporation named and styled "The President, Directors and Company of the State Bank," but commonly called "The State Bank," and located in the City of Charleston in the State of South Carolina, Petitioner, Plaintiff in error, and R. H. Jennings, as Treasurer of the State of South Carolina, Respondent, Defendant in error, wherein was drawn in question the validity of a treaty or statute of, or an authority exercised under, the United States, and the decision was against their validity; or wherein was drawn in question the validity of a statute of, or an authority exercised under, said State, on the ground of their being repugnant to the Constitution, treaties, or laws of the United States, and the decision was in favor of such their validity; or wherein was drawn in question the construction of a clause of the Constitution, or of a treaty,
44 or statute of, or commission held under the United States, and the decision was against the title, right, privilege, or exemption specially set up or claimed under such clause of the said Constitution, treaty, statute, or commission; a manifest error hath happened to the great damage of the said Henry A. M. Smith, as Receiver as aforesaid, as by his complaint appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do

command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same in the said Supreme Court at Washington, within thirty days from the date hereof, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the fourteenth day of August, in the year of our Lord one thousand nine hundred and five.

[U. S. Seal Circuit Court, District of So. Carolina.]

C. J. MURPHY,
Clerk of the Circuit Court of the United States for the District of South Carolina.

Allowed by
Y. J. POPE,
Chief Justice of the Supreme Court of the State of South Carolina.

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 18 Aug., 1905. U. R. Brooks, Clerk.

45 UNITED STATES OF AMERICA, *ss:*

To the Honorable R. H. Jennings, as Treasurer of the State of South Carolina, Greeting:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, at Washington, within thirty days from the date hereof, pursuant to a writ of error, filed in the Clerk's Office of the Supreme Court of the State of South Carolina, wherein Henry A. M. Smith, as Receiver of the late corporation named and styled "The President, Directors and Company of the State Bank," but commonly called "The State Bank," and located in the City of Charleston, in the State of South Carolina, is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Y. J. Pope, Chief Justice of the Supreme Court of the State of South Carolina, this fourteenth day of August, in the year of our Lord one thousand nine hundred and five.

Y. J. POPE,
Chief Justice of the Supreme Court of the State of South Carolina.

I hereby acknowledge due and legal service of above citation upon me this 18th day of August, 1905.

U. X. GUNTER, JR.,
Att'y Gen'l for S. C., Att'y for Def't in Error.

[Endorsed:] Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 18 Aug., 1905. U. R. Brooks, Clerk.

46 In the Supreme Court of the United States. October Term, 1905.

HENRY A. M. SMITH, as Receiver of the Late Corporation Named and Styled "The President, Directors and Company of the State Bank," but Commonly Called "The State Bank," and Located in the City of Charleston, in the State of South Carolina, Petitioner, Plaintiff in Error,

vs.

R. H. JENNINGS, as Treasurer of the State of South Carolina, Respondent, Defendant in Error.

Assignment of Errors.

Henry A. M. Smith, as Receiver as aforesaid, Plaintiff in error, by T. W. Bacot his Attorney, comes and says that in the record and proceedings in the above entitled matter there is manifest error, as follows, to wit:

I.

That the Supreme Court of the State of South Carolina erred in deciding that the "Joint Resolution to authorize and require the State Treasurer to write off of the books in his office certain Bonds entered on said books as 'Old Bonds not Fundable (Act of 1896), Blue Ridge Railroad Bonds, $37000'" was constitutionally and legally passed by the General Assembly of the State of South
47 Carolina over the Governor's veto thereof.

II.

That the Supreme Court of the State of South Carolina erred in deciding that the said Joint Resolution became a law and took effect as such notwithstanding the use of the word "resolved" in its style instead of the word "enacted."

III.

That the Supreme Court of the State of South Carolina erred in deciding that the said Joint Resolution does not impair the obligation of any contract and is not therefore repugnant to and in violation of either the "Federal" or the "State" Constitutions: It being submitted that said Joint Resolution did impair the obligation of the State's own contract; in that it tended to, and did obliterate, invalidate and destroy the existence and validity of certain Bonds of said State, directed to be written and charged off under said Resolution; and obliterated, invalidated and destroyed the evidence as to the existence and continuing obligation of the same.

IV.

That the Supreme Court of the State of South Carolina erred in refusing the injunction prayed for and in revoking the temporary

restraining order theretofore granted and in dismissing the petition of the said Henry A. M. Smith as Receiver as aforesaid.

48 Wherefore the said Henry A. M. Smith as Receiver as aforesaid prays that the said decision and judgment and decree of the said The Supreme Court of the State of South Carolina be reversed, and that the said The Supreme Court of the United States do cause further to be done herein with of right and according to the laws and customs of the United States should be done.

T. W. BACOT,
Attorney of the Plaintiff in Error.

Supreme Court of South Carolina, Clerk's Office, Columbia, S. C. Filed 18 Aug. 1905. U. R. Brooks, Clerk.

49 [Endorsed:] Original. In the Supreme Court of the United States. October Term, 1905. Henry A. M. Smith, as Receiver, &c., Plaintiff in error, *vs.* R. H. Jennings, as Treasurer of the State of South Carolina, Defendant in Error. Assignment of Errors.

50 [Endorsed:] The State of South Carolina, in the Supreme Court. H. A. M. Smith as Receiver &c., Petitioner, *vs.* R. H. Jennings as Treasurer of the State of South Carolina, Respondent. Authenticated Transcript of Record—together with Writ of Error, Citation, and Assignment of Errors.

Endorsed on cover: File No. 19,882. South Carolina supreme court. Term No. 104. Henry A. M. Smith, as receiver of the late corporation named and styled "The President, Directors and Company of the State Bank," &c., plaintiff in error, *vs.* R. H. Jennings, as treasurer of the State of South Carolina. Filed August 25, 1905. File No. 19,882.